In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.6454 of 2005.

Date of decision:19.4.2007.

Chet Ram and another.

...Petitioners.

Versus

Godawari and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Harkesh Manuja Advocate and Mr. Vishal Sharma Advocate for the petitioners.

Mr.Dinesh Nagar and Mr. Arun Walia Advocates for respondent No.3.

Mr. V.K.Jain, Senior Advocate with Mr.Ashwani Gaur, Advocate for respondent Nos.1,4,6, 8 and 9.

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Judgment.

S. N. Aggarwal, J.

Mehar Singh was the owner of land measuring 215 Kanals 1 Marla situated in village Rathdhana, Tehsil and District Sonepat. He suffered a decree in favour of his son Mahender Singh on 23.8.1984 for 160 Kanals 8 Marlas of land. Thereafter, on 26.2.1985, Mahender Singh suffered a decree in favour of his father Mehar Singh for half of the land transferred to him vide decree dated 23.8.1984. Mutation was sanctioned on the basis of judgment and decree dated 26.2.1985 on 2.4.1985. This status

continued for 13 years.

Mehar Singh had five daughters and one wife besides his son Mahender Singh. He executed Will on 12.10.1998 in favour of his wife and daughters. Mehar Singh died on 7.6.1999. Mutation of the land owned by Mehar Singh was sanctioned in favour of the widow and daughters of Mehar Singh on the basis of Will dated 12.10.1998.

The widow and daughters of Mehar Singh applied for the grant of Succession Certificate. Mahender Singh father of petitioner No.1 and husband of petitioner No.2 was also a party. He filed the written statement admitting the claim of the widow and daughters of Mehar Singh (mother and sisters of Mahender Singh). He also admitted the validity of the Will executed by his father Mehar Singh in favour of his wife and daughters and accordingly Succession Certificate was granted to the widow and daughters of Mehar Singh by the Civil Court on 27.5.2003.

Thereafter Mahender Singh filed a civil suit on 11.12.2003 challenging the mutation sanctioned on the basis of Will but the said suit was dismissed in default.

Thereafter, the son and wife of Mahender Singh filed the present suit on 17.9.2004 challenging the judgment and decree dated 26.2.1985 suffered by Mahender Singh in favour of his father Mehar Singh. In the said suit, the petitioners also filed an application for interim stay which was dismissed by the learned trial Court vide order dated 19.4.2005.

The petitioners filed an appeal. The learned Lower Appellate Court also dismissed the appeal vide judgment and decree dated 23.11.2005.

Hence, the present petition.

The submission of learned counsel for the petitioners was that no decree was suffered by Mahender Singh in favour of his father Mehar Singh on 26.2.1985. Reference was made to the report of the Document Expert. It was also submitted that since the question of title is pending before the learned trial Court, the respondents be restrained from alienating the suit property during the pendency of civil suit.

These submissions were countered by the learned counsel for the respondents on the ground that the suit land was owned by Mehar Singh which has come to the respondent on the basis of valid Will dated 12.10.1998. It was also submitted that the civil suit was filed by Mahender Singh on 11.12.2003 challenging the mutation sanctioned on the basis of Will in favour of the respondent but the said suit was dismissed and the petitioners have no right to file the suit on 17.9.2004 i.e. after about 19 years to challenge the judgment and decree dated 26.2.1985.

Considered.

The petitioners had no right in the land owned by Mehar Singh. Mehar Singh had already given one half share of his land measuring 160 Kanals 8 Marlas to the father of petitioner No.1 and husband of petitioner No.2 and the remaining land has been inherited by widow and daughters of Mehar Singh on the basis of Will dated 12.10.1998. Therefore, the petitioners did not have a prima-facie case.

Moreover, both the Courts below have recorded concurrent finding of fact and this Court finds no ground to interfere with the same.

No merit.

Dismissed.

April 19,2007. (S. N. Aggarwal)
Jaggi Judge